

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OWEN ELLIOT,

Defendant.

No. 05-CR-80592

District Judge Victoria A. Roberts

Magistrate Judge R. Steven Whalen

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**ORDER DENYING RENEWED MOTION TO PRODUCE
CONFIDENTIAL INFORMANT**

On October 25, 2005, following an *in camera* hearing, the Court denied Defendant's motion to produce a confidential informant. On February 2, 2006, an evidentiary hearing was held on Defendant's motion to suppress evidence. Defendant has now filed a renewed motion to produce the informant [Doc. #41], arguing that the accuracy of the information provided by the informant is crucial to the probable cause determination.

It is true that information from the informant was one factor supporting probable cause to stop and search the automobile in which Defendant was a passenger. But that is not dispositive of whether the Defendant's need for disclosure outweighs the government's need to conceal the identity of the informant pursuant to the "informer's privilege" described in *Roviaro v. United States*, 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639 (1957). The test is whether the informant can give relevant testimony that is helpful to the defense. *See United*

States v. McManus, 560 F.2d 747, 751 (6th Cir. 1977), *cert. denied*, 434 U.S. 1047, 98 S.Ct. 894, 54 L.Ed.2d 798 (1977); *United States v. Straughter*, 950 F.2d 1223, 1232 (6th Cir. 1991). Following *in camera* examination of the informant, the Court found that the informant had no information sufficiently useful to the defense to overcome the *Roviaro* privilege. Nothing adduced at the suppression hearing changes that conclusion. The informant has no information that is exculpatory or that would in any way help the Defendant as to either the substantive question of guilt or the determination of probable cause as it relates to the suppression motion. Indeed, much of the information on which probable cause was based was independently corroborated. *See Report and Recommendation*, filed contemporaneously with this Order.

Accordingly, Defendant's Renewed Motion to Produce Informant [Docket #41] is DENIED.

SO ORDERED.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: July 12, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on July 12, 2006.

S/Gina Wilson
Judicial Assistant